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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/741,981	10/31/96	RIXON	C D11-051
EXAMINER			

35M1/0224

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DATE OF ACTION	PAPER NUMBER
3502	3
DATE MAILED: 02/24/97	

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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DETAILED ACTION

1. The drawings are objected to because they do not include certain reference signs mentioned in the description. 37 CFR § 1.84(f) states, "Reference signs not mentioned in the description shall not appear in the drawing and vice versa." The following reference signs are not included in the drawings: 12e, 20. Correction is required.
2. The drawings are objected to as failing to comply with 37 CFR § 1.84(f) which states, "The same part of an invention appearing in more than one view of the drawing must always be designated by the same character." However, "30c" and "30i" have both been used to designate the flange structure (see Figures 3 and 4). Also, "56" and "54" have both been used to designate the spring (see Figures 5 and 9). Correction is required.
3. The disclosure is objected to because of the following informalities: Both the left and right housing sections described on page 8 of the specification use the same reference numbers. Both the drawings and the specification are replete with reference number errors only a few of which have been pointed out. Careful revision correction of both the specification and the drawings is required.
4. Claim 13 is objected to because of the following informalities: In the third to the last line, "an" should be deleted for proper grammar. Appropriate correction is required.
5. Claims 1-12, 14, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 16 of claim 1, --structure-- should be

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inserted after "pedal" for proper antecedent basis. In line 5 of claim 15, "the pivot shaft" lacks antecedent basis.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 3, 7, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibas in view of Stewart. Gibas discloses an adjustable pedal assembly for a vehicle comprising a carrier (58), guide means (52) mounting the carrier for movement relative to the vehicle, drive means (84) for moving the carrier along the guide means, a pedal structure (64) including a pivot shaft (62) at the upper end mounted on the carrier for pivotal movement relative to the carrier and including a pedal pad (68), generator means (78) operative in response to movement of the pedal structure relative to the carrier to generate an electric control signal proportioned to the extent of pivotal movement of the pedal structure relative to the carrier; wherein the pedal structure includes a pedal arm carrying the pedal pad at the lower end of the pedal arm; wherein the guide means comprises a guide rod, the carrier includes an upper portion mounted on the guide rod for sliding movement along the guide rod. But Gibas does not disclose the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journaled wherein the coil spring

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encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface. Stewart discloses a foot pedal assembly for motor vehicles comprising a bracket (14), a pedal (60), a coil spring (82), means operative in response to tightening of the spring including an annular sleeve (80) mounted on an annular friction surface (78) defined by a hub structure within which a pivot shaft (52) is journalled, wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface for the purpose of providing a hysteresis effect (see column 5, lines 26-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gibas by including the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journalled wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface in view of Stewart for the purpose of providing the desired hysteresis effect.

8. Claims 4, 5, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibas in view of Stewart and further in view of Byram et al. Gibas as modified by Stewart discloses the pedal assembly as previously discussed, but does not disclose the generator means including a potentiometer mounted on the carrier whose setting is varied in response to pivotal movement of the pedal structure on the carrier, or the potentiometer including a

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central shaft comprising the pivot shaft of the pedal arm. Byram et al. (see second embodiment, Figures 9-13) discloses a pedal assembly including a pedal (14, 16), a carrier (65), a potentiometer (34b) mounted on the carrier whose setting is varied in response to pivotal movement of the pedal on the carrier, the potentiometer including a central shaft (12b) comprising the pivot shaft of the pedal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Gibas by the generator means including a potentiometer mounted on the carrier whose setting is varied in response to pivotal movement of the pedal structure on the carrier, and the potentiometer including a central shaft comprising the pivot shaft of the pedal arm in view of Byram et al. for the purpose of maintaining smooth operation of the engine.

9. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of Copending

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Application Number 08/516,050 in view of Stewart. The claims of Copending Application Number 08/516,050 disclose the adjustable pedal assembly as claimed in claims 1-15 of the present application, but do not disclose the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journalled wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface. Stewart discloses a foot pedal assembly for motor vehicles comprising bracket (14), pedal (60), coil spring (82), means operative in response to tightening of the spring including an annular sleeve (80) mounted on an annular friction surface (78) defined by a hub structure within which a pivot shaft (52) is journalled, wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface for the purpose of providing a hysteresis effect (see column 5, lines 26-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claims 1-22 of Copending Application Number 08/516,050 by including the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journalled wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional

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engagement with the friction surface in view of Stewart for the purpose of providing the desired hysteresis effect.

This is a provisional obviousness-type double patenting rejection.

11. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 6-14, 16, and 17 of Copending Application Number 08/513,017 in view of Byram et al. and Stewart. The claims of Copending Application Number 08/513,017 disclose the adjustable pedal assembly as claimed in claims 1-15 of the present application, but do not disclose generator means operative in response to movement of the pedal structure to generate an electric control signal proportioned to the extent of movement of the pedal structure in the form of a potentiometer whose setting is varied in response to pivotal movement of the pedal structure, the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journaled wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface. Byram et al. (see second embodiment, Figures 9-13) discloses a pedal assembly including a pedal (14, 16), a carrier (65), generator means operative in response to movement of the pedal structure to generate an electric control signal proportioned to the extent of movement of the pedal structure in the form of a potentiometer (34b) mounted on the carrier whose setting is varied in response to pivotal movement of the pedal on the

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carrier. Stewart discloses a foot pedal assembly for motor vehicles comprising bracket (14), pedal (60), coil spring (82), means operative in response to tightening of the spring including an annular sleeve (80) mounted on an annular friction surface (78) defined by a hub structure within which a pivot shaft (52) is journaled, wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface for the purpose of providing a hysteresis effect (see column 5, lines 26-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claims 1, 2, 4, 6-14, 16, and 17 of Copending Application Number 08/513,017 by the generator means including a potentiometer mounted on the carrier whose setting is varied in response to pivotal movement of the pedal structure on the carrier, and the potentiometer including a central shaft comprising the pivot shaft of the pedal arm in view of Byram et al. for the purpose of maintaining smooth operation of the engine. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claims 1, 2, 4, 6-14, 16, and 17 of Copending Application Number 08/513,017 by including the coil spring, means operative in response to tightening of the spring including an annular sleeve mounted on an annular friction surface defined by a hub structure within which the pivot shaft is journaled wherein the coil spring encircles the sleeve which is positioned over the hub structure so that tightening of the spring urges the sleeve into frictional engagement with the friction surface in view of Stewart for the purpose of providing the desired hysteresis effect.

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This is a provisional obviousness-type double patenting rejection.

12. Any inquiry concerning this communication should be directed to Mimi Battista at telephone number (703) 305-6306.



MB
February 20, 1997


CHARLES A. MAHIMUH
SUPERVISORY PATENT EXAMINER
ART UNIT 3502